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No. 52213-6

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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Michael O. Moeller

Appellant,

vs.

Debbie J. Moeller

Respondent,

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**APPELLANT'S OPENING BRIEF**

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**I. INTRODUCTION**

This appeal stems from Orders issued in Pierce County Superior Court dated June 15, 2018 (Revision), June 29, 2018 (Revised Revision) and July 15, 2018 (Reconsideration), which found Mr. Moeller in contempt of court and finding he willfully violated the court's order of child support.

**II. IDENTITY OF APPELLANT**

Appellant Michael O. Moeller is an individual residing in Washington State.

**III. ASSIGNMENTS OF ERROR**

3.1 The trial court erred in granting Mrs. Schultz motion for show cause contempt finding that Mr. Moeller willfully was in noncompliance with court ordered child support.

3.2 The trial court erred in applying parts of Mr. Moeller's reduced arrears judgment to past child support interest.

3.3 The trial court erred by allowing Ms. Schultz to alter the language provided in the original June 15, 2018 Order of Revision from "supported" to "paid" when the Revised Order of Revision was entered June 29, 2018.

3.4 The trial court erred in denying Mr. Moeller's Motion for Reconsideration.

#### **IV. STATEMENT OF THE ISSUES**

4.1 Under Washington Law, did Mr. Moeller's actions constitute contempt of court for non-payment of child support when he was paying continuously via wage garnishment?

4.2 Under Washington law, does a trial court apply a reduced arrears judgment to past interest?

4.3 Under Washington law, was the language from the June 29, 2018 Order improperly changed to "support paid"?

4.4 Under Washington State Law, was the June 15, 2018 Reconsideration denial entered in error?

#### **V. STATEMENT OF THE CASE**

Michael Moeller and Debbie Schultz dissolved their marriage in May 2003. At the time of dissolution, the parties had two minor children. (CP 247-254). In February of 2007, an Order Modifying Child Support was entered into Pierce County Superior Court along with an Order of Contempt. (CP 255-259, 260-261). The Order of Contempt originated from past-due child support, which had accrued since the dissolution. (CP 255-259). In August of 2008, the parties conceived a third child. In December of 2012, Ms. Schultz requested that the Washington State Department of Social and Health Services Division of Child Support

(“DCS”) establish an administrative order of support and assign arrears for the parties’ youngest child. (CP 0041-0051).

In March of 2018, Mr. Moeller filed a motion to vacate prior orders of support along with the Order of Contempt. (CP 328-329, 262-327). Mr. Moeller later amended his motion to vacate to include an administrative Order of Support and arrears assignment. (CP 389-390). In March of 2018, Ms. Schultz filed a motion for contempt stemming from past due support owed. (CP 0008-0021). The trial court ordered Mr. Moeller in contempt on May 29, 2018. (CP 255-259). On June 1, 2018, Mr. Moeller requested a revision of the May 2018 finding of contempt and subsequent judgment. (CP 121-124). At the hearing on Mr. Moeller’s revision request, the Court removed part of Mr. Moeller’s arrears – one child had reached the age of 18 – but upheld the Contempt Order. (CP 178-179). Court was adjourned until the parties could present an order indicating the amount of credit due for the aged-out child. (CP 179). A final Revised Order of Contempt was entered on June 29, 2018. Mr. Moeller moved for reconsideration, which was denied on July 13, 2018. (Order denying Reconsideration). This appeal followed.

## **VI. SUMMARY OF ARGUMENTS**

In finding Mr. Moeller in contempt, the trial court erred. Subsequent to the parties’ final dissolution, and subsequent to the finding

of contempt, the parties reconciled and had several short periods of cohabitation. From March 2017 to June 2012, the parties lived together continuously. Although Mr. Moeller did not pay child support, he provided for the family, including the children, as a cohabitating member of the family. During that period of reconciliation, the parties had a third child, which was born in August of 2008 and acquired real property in 2011.

Ms. Schultz told Mr. Moeller that she would forgive his child-support arrears because of their 2007 reconciliation but wanted to maintain the wage garnishment through DCS to maintain a household income conducive to obtaining reductions in the cost of daycare and health insurance for the three children. (CP 262-327). The parties thus agreed to allow the wage garnishment to continue for a short period in order to resolve the daycare and health-insurance arrangements. (CP 271).

Unfortunately, Mr. Moeller struggled to find employment during the period of cohabitation, which resulted in further arrears. (CP 324-327). Ultimately, Ms. Schultz contacted DCS and requested that it suspend wage garnishment and collection of support against Mr. Moeller. (CP 291).

During the 5-year-period of reconciliation, the parties continuously co-habitated, shared expenses, and pooled funds and resources as if they were a married couple. Furthermore, when the parties had their third child,

they opted to have Mr. Moeller stay at home and provide for the children. In June 2012, the parties separated and no-longer co-habitated.

During the 2018 Contempt proceedings, Mr. Moeller requested a stay of the Contempt proceedings in order to allow for discovery, which was ultimately denied. (CP 87-89). Moreover, Mr. Moeller raised the defenses provided for under *Matter of Marriage of Lindsey*, 101 Wn.2d 299, 678 P.2d 328 (1984) as well as equitable defenses, such as estoppel, which were wrongly denied by the trial court. (CP 0060-0081, 0087-0096, 0097-0100)

In addition, Mr. Moeller complied with the support order because he was making child-support payments continuously through wage garnishment and was paying more than what was due because the support order included payment for the aged-out child.

Finally, when the trial court removed the arrears for the aged-out child, it improperly applied the credit to past interest; the June 20, 2018 order improperly altered language that was entered at the June 15, 2018 Revision which provided that Mr. Moeller had 1 year to provide proof that the past support had been provided.

## VII. ARGUMENT

### A. Standard of Review

The Court reviews the commissioner's finding for abuse of discretion. *In re Marriage of James*, 79 Wn.App. 436, 439-40, 903 P.2d 470 (1995). A trial court abuses its discretion by basing its decision on untenable grounds or untenable reasons. *James*, 79 Wn.App. at 440. Unless there is an abuse of the trial court's discretion, the court of appeals will not disturb the trial court's finding. *Schuster v. Schuster*, 90 Wn.2d 626, 630, 585 P.2d 130 (1978).

B. The Trial Court improperly found Mr. Moeller in contempt

“Contempt” is an intentional disobedience of a lawful court order. RCW § 7.21.010(1)(b). “[A] finding that a violation of a previous court order was intentional is required for a finding of contempt. *Holiday v. City of Moses Lake*, 157 Wn.App. 347, 355, 236 P.3d 981 (2010).

Mr. Moeller pays his current and past child support through DCS wage assignment. Prior to the May 2018 removal of the support stemming from the aged-out child, DCS was collecting support for an adult child in excess of \$250.00. (CP 324-327). This continued for approximately 36 months and resulted of an *over*-payment and eventual credit towards the arrears owed to Ms. Schultz. (CP 0178-0179). At the time of the Contempt Order, Mr. Moeller was actively and continuously paying *more* child support than the amount he owed on a monthly basis. (CP 324-327).

Nevertheless, the trial court found Mr. Moeller in contempt, finding that he had refused to pay.

For the foregoing reasons, Mr. Moeller respectfully requests that the Court find that the trial court abused its discretion in finding Mr. Moeller in contempt.

C. By applying a reduced judgment to past interest, the trial court abused its discretion

The relief granted by the trial court at the revision was a reduction of judgment. As such, the court was not bound to apply credits to interest. Traditionally, payments made for child support are allocated first to current obligations, *Roberts v. Roberts*, 69 Wn.2d 863, 867-69, 420 P.2d 864 (1966), then to the oldest unexpired obligation and interest thereon. *Kruger v. Kruger*, 37 Wn.App. 329, 333, 679 P.2d 961 (1984); *see Chudzinski v. Chudzinski*, 26 Ariz.App. 130, 546 P.2d 1139, 1141-42 (1976); 60 Am.Jur.2d Payments § 103, at 949-50 (1987) (“Where an involuntary payment is made before the statute of limitations has run, it should be applied to the oldest debts to save those last maturing from being barred.”).

At the hearing on the revision, the trial court held that Mr. Moeller was due an offset towards the arrears for overpayment collected for the aged-out child. (CP 0178-0179). Court was adjourned until the parties

could obtain a proper order. On June 29, 2018, the court entered the final Revised order with Ms. Schultz's proposed figures. (06/29/2018 Order on Revision). Those figures improperly allocated the credit towards interest owed after 2015 and improperly calculated child support for the aged-out child through her high-school graduation date of June 10, 2015. (06/29/2018 Order on Revision). The trial court made this calculation even though the only evidence submitted was that the child's birthdate was May 30, 2001. (CP 0216-0217).

Under Washington law, payments made for child support are allocated first to current obligations, *Roberts*, 69 Wn.2d at 867-69, 420 P.2d 864, then to the oldest unexpired obligation and interest thereon. *Kruger v. Kruger*, 37 Wn.App. 329, 333, 679 P.2d 961 (1984).

The amount of arrears in interest allocated for the aged-out child should have been applied to the judgment itself, not the accrued interest. *Id.* Instead, the trial court applied the surplus to interest. Mr. Moeller respectfully submits that this calculation was in error and abused the trial court's discretion.

D. The trial court improperly changed the language from the June 29, 2018 Order from "support of children" to "support paid."

"Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and

after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).” CR 60(a).

On June 15, 2018, the Court entered an order identifying how potential future offsets should be applied. (CP 0179). The language was altered in Ms. Schultz’ proposed order at the final entry of the order on June 29, 2018. The court’s earlier record reflects that there was extensive argument between the parties about the language pertaining to future support offsets. (Transcript of Proceedings 20:17-21:2 (June 15, 2018)). And the trial court opted to remove “verified” as a requirement since some of the support indicated by Mr. Moeller was not always financial support, but in-kind/indirect support of the parties’ quasi marital community.

In entering the “support paid” language, the trial court mistakenly adopted faulty submitted language. Mr. Moeller respectfully submits that that phrase should be amended pursuant to CR 60(a) and RAP 7.2(e) to read “support of children.”

E. The Trial Court improperly denied Mr. Moeller’s Motion for Reconsideration

“The doctrine of laches is a creature of equity and is grounded upon the principles of equitable estoppel.” *Luellen v. Aberdeen*, 20 Wn.2d 594, 602, 148 P.2d 849 (1944) (overruled on other grounds by *Stenberg v. Pacific Power & Light Co., Inc.*, 104 Wn.2d 710, 709 P.2d 793 (1985)). In

applying the doctrine, under any circumstances, the following general principles appear apropos: Mere delay, lapse of time, and acquiescence, standing alone, do not bar a claim short of the statute of limitations. Generally speaking, where parties are equally at fault, neither can successfully assert laches against the other. *National City Bank v. International Trading Co. of Am.*, 167 Wn. 311, 9 P.2d 81 (1932).

WPI 302.05 states as follows:

A party is not allowed to make a claim that contradicts or repudiates [his] [her] [its] earlier statement, admission, or conduct on which another has reasonably relied, if the relying party would be injured by such contradiction or repudiation. This is known as “estoppel.”

In order to prove estoppel, (insert party claiming estoppel) has the burden of proving, by clear, cogent, and convincing evidence:

- (1) That (insert other party) said or did something on which (insert claiming party) relied;
- (2) That (insert claiming party) reasonably relied on (insert other party's) statement or conduct; and
- (3) That (insert claiming party) would be injured if (insert other party) were allowed to contradict that statement or conduct now

WPI 302.05.

Mr. Moeller relied upon Ms. Schultz’ assertion that she would forgive his child support obligations for the period of time between 2007 and 2012 when the parties were living together. Mr. Moeller relied on that statement to his detriment, to help provide for the parties’ children via health insurance and daycare. (CP 262-327). He is entitled to relief from

child support obligations for the period of time that he was living with Ms. Schultz, and their three children, as a family.

**VIII. CONCLUSION**

For the foregoing reasons, the trial court's order of contempt should be reversed.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of February, 2019



Jesse Froehling, WSBA #47881  
Attorney for Michael O. Moeller

**CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that I served the foregoing document to the Court of Appeals, Division II, Stephan Fisher via first class mail and email.

Dated this 15<sup>th</sup> day of February, 2019

*Michael Moeller*

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Michael Moeller

**RIDGELINE LAW GROUP**

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**Transmittal Information**

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